

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

IN THE MATTER OF:) ADMINISTRATIVE ORDER ON CONSENT
) FOR REMOVAL ACTION AND
North Ridge Estates,) STREAMLINED RISK ASSESSMENT
Klamath County, Oregon)
) U.S. EPA Region 10
Melvin L. Stewart, Mary Lou) Docket No. CERCLA-10-2003-0088
Stewart, Kenneth L. Tuttle, M.D.,)
Kenneth L. Tuttle, M.D. P.C.,) Proceeding Under Sections 104, 106(a), 107, and
Kenneth L Tuttle as Trustee of the) 122 of the Comprehensive Environmental
Kenneth L. Tuttle M.D., P.C.,) Response, Compensation, and Liability Act, as
Employee Pension and Profit) amended, 42 U.S.C. §§ 9604, 9606(a), 9607, and
Sharing Plan and Trust for Kenneth) 9622
L. Tuttle, MBK Partnership, and)
M. L. Stewart, Inc.)
Respondents)

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent (“Order”) is entered into voluntarily by the U.S. Environmental Protection Agency (EPA) and Melvin L. Stewart, Mary Lou Stewart, Kenneth L. Tuttle, M.D., Kenneth L. Tuttle M.D. P.C., Kenneth L. Tuttle as Trustee of the Kenneth L. Tuttle, M.D., P.C., Employee Pension and Profit Sharing Plan and Trust for Kenneth L. Tuttle, MBK Partnership, and M. L. Stewart, Inc. (“Respondents”) for the performance of certain removal actions and conduct of a streamlined human health risk assessment at the Site identified herein.

2. This Order is issued pursuant to the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 ADMINISTRATIVE ORDER ON CONSENT - May 20, 2003
NORTH RIDGE ESTATES

U.S.C. §§ 9604, 9606(a), 9607, and 9622, and delegated to the EPA Administrator by Executive Order No. 12580, January 23, 1987, 52 *Federal Register* 2923, and further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-D. This authority has been further redelegated to the Unit Managers of the EPA Region 10 Environmental Cleanup Office through delegation Nos. R1014-14-A and R1014-14-D.

3. EPA has notified the State of Oregon of this action pursuant to CERCLA Section 106(a), 42 U.S.C. § 9606(a).

4. Except in a proceeding to enforce the terms of this Order, Respondents' participation in this Order shall not constitute or be construed as an admission of liability or of EPA's findings of fact or conclusions of law contained in this Order.

5. Respondents agree to comply with and be bound by the terms of this Order. Respondents further agree that they will not contest the basis or validity of this Order or its terms.

II. PARTIES BOUND

6. This Order applies to and is binding upon EPA, and upon Respondents and Respondents' successors and assigns, but not including any owners of lots in North Ridge Estates, other than Respondents, sold for residential use prior to the Effective Date. Any change in ownership or partnership status of Respondents including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondents' responsibilities under this Order.

7. Respondents are jointly and severally liable for carrying out all activities required by this Order. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Order, the remaining Respondents shall complete all such requirements.

8. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondents shall be responsible for any noncompliance with this Order.

III. DEFINITIONS

9. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the attachments hereto and incorporated hereunder, the following definitions shall apply:

- A. “Action Memorandum” shall mean the EPA Action Memorandum relating to the Site signed by the Director, Environmental Cleanup Office, U.S. EPA Region 10, and all attachments thereto. The “Action Memorandum” shall be attached as Appendix B.
- B. “Asbestos-Containing Material” or “ACM” shall mean asbestos-containing materials identified and defined at 40 C.F.R. § 61.141, to include Category I and II nonfriable ACM.
- C. “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601, *et seq.*;
- D. “Day” shall mean a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day;
- E. “Effective Date” shall be the effective date of this Order as provided in Section XXX.

- F. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States;
- G. “Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing, or enforcing this Order, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section IX (Site Access), Section XIII (Emergency Response), and Paragraph 72 (work takeover).
- H. “Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
- I. “Matters Addressed” shall mean all Work under this Order. “Matters Addressed” in this Order do not include those response costs or response actions as to which EPA has reserved its rights under this Order (except for claims for failure to comply with this Order), in the event that EPA asserts rights against Respondents coming within the scope of such reservations.
- J. “MBK” or “MBK Partnership” for purposes of this Order alone means the following persons or entities: Melvin L. Stewart, M.L. Stewart, Inc., Mary Lou Stewart, Kenneth L. Tuttle, M.D.,

Kenneth L. Tuttle, M.D., P.C., and Kenneth L. Tuttle, as Trustee for Kenneth L. Tuttle, M.D., P.C., Employee Pension and Profit Sharing Plan and Trust for Kenneth L. Tuttle.

- K. “National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto;
- L. “Order” shall mean this Administrative Order on Consent, as may be modified, and all attachments hereto, including the SOW, and all documents incorporated by reference or that may be attached upon approval by EPA and Respondents. In the event of conflict between this Order and the SOW, the SOW shall control. In the event of conflict between this Order and any other attachment, this Order shall control;
- M. “Paragraph” shall mean a portion of this Order identified by an Arabic numeral or an upper case letter;
- N. “Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurred in connection with the Site from April 4, 2003, through the Effective Date, plus Interest on all such costs through such date.
- O. The “Site” shall mean that portion of the site of the former United States military facility located on Old Fort Road approximately three miles north of Klamath Falls, Oregon, described and identified on Klamath County tax map 38-09-15D as southeast quarter, Sections 14 and 15, Township 38 South, Range 9 East,

Willamette Meridian, depicted on the map attached as Appendix C, and now commonly known as the North Ridge Estates subdivision.

- P. “Respondents” shall mean MBK, together with its individual partners and legal successors.
- Q. “State” shall mean the State of Oregon or agencies thereof, including the Oregon Department of Environmental Quality and the Oregon Department of Human Services.
- R. “Statement of Work” or “SOW” shall mean the written specifications of the Work to be performed by Respondents pursuant to this Order and as attached to this Order as Appendix A, together with all of its attachments, revisions, and modifications thereto approved by EPA.
- S. “Supervising Contractor” shall mean the principal contractor retained by the Respondents to supervise and direct the implementation of the Work under this Order;
- T. “United States” shall mean the United States of America;
- U. “Waste Material” shall mean 1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and 4) any “hazardous substance” under ORS 465.200(20).
- V. “Work” shall mean all activities Respondents are required to perform under Section VIII of this Order as set forth in the SOW, except that required by Paragraphs 20-21, 47-48 (Designation of Contractors, Payment of Costs).

IV. FINDINGS OF FACT

10. The Site is the site of the former Marine Recuperational Barracks facility, located in Klamath County, Oregon. The Marine Recuperational Barracks facility was built in 1944 by the United States Department of Defense and consisted of approximately 80 buildings.

11. Buildings within the Marine Recuperational Barracks facility were constructed with cement asbestos board siding and included asbestos insulation, roofing materials, floor tiles, and other asbestos-containing materials (ACM). Heat was provided to the buildings through a series of buried steam pipes wrapped in asbestos-containing insulation.

12. In 1946, the Marine Recuperational Barracks closed, and the Site was transferred to the State of Oregon for use by the Oregon Technical Institute (now Oregon Institute of Technology) until the early 1960s. The Site subsequently passed into private ownership.

13. On or about December 21, 1977, the Site was purchased by Respondents.

14. Following their purchase of the Site, Respondents demolished additional buildings remaining on the Site and subdivided the Site into residential lots. Some of these lots have been sold and developed, and are now occupied for residential use. Other lots remain owned by Respondents.

15. Within the developed area of the Site there are now 22 homes with 63 residents, including 26 children (ten children under the age of seven).

16. The construction and demolition of buildings and infrastructure within the Site released asbestos and/or ACM into the environment.

17. Inhalation or ingestion of asbestos fibers can cause severe and fatal health effects, including mesothelioma, asbestosis, and lung cancer, as well as cancers of the esophagus, stomach, colon, and rectum.

V. CONCLUSIONS OF LAW

18. Based on the Findings of Fact set forth above, and the Administrative Record supporting the selected removal actions, EPA has determined the following:

- A. The Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- B. Substances found within the Site include asbestos, which constitutes a “hazardous substance” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- C. Respondents are each a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- D. Respondents are liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as provided below:
 - a. Respondents are present “owners” and/or “operators” of a facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).
 - b. Respondents are within the class of “owners” and/or “operators” of a facility at the time of disposal of any hazardous substances described in this section at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601 (20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 107(a)(2).
- E. The conditions described in the Findings of Fact above constitute an actual or threatened “release” of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- F. The conditions described in the Findings of Facts above may present an imminent and substantial endangerment to public

health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). These factors include the actual or potential exposure of nearby human populations to hazardous substances.

- G. The response actions identified in the attached Action Memorandum are necessary to protect the public health, welfare, or the environment, are not inconsistent with the NCP and CERCLA, and are expected to contribute to the efficient performance of any long-term remedial actions within or with respect to the Site.

VI. ORDER

19. Based upon the foregoing Findings of Fact, Conclusions of Law, and the Administrative Record supporting the Action Memorandum, it is hereby ordered and agreed that Respondents shall comply with the provisions of this Order, including, but not limited to, all attachments to this Order, and all documents incorporated by reference into this Order.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

20. Selection of Supervising Contractor. All aspects of the Work to be performed by Respondents pursuant to this Order shall be under the direction and supervision of the Supervising Contractor. PBS Engineering and Environmental (PBS) has been selected by Respondents and approved by EPA as Supervising Contractor. If at any time hereafter, Respondents propose to change their Supervising Contractor, Respondents shall notify EPA and obtain an authorization to proceed before the new Supervising Contractor performs, directs or supervises any Work under this Order. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a proposed contractor, Respondents

shall submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to it within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractors that it disapproves and an authorization to proceed with respect to any of the other contractors. Respondents may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within 21 days of EPA's authorization to proceed.

21. Designation of Project Coordinator. Respondents have designated Dulcy Berri, PBS engineering and Environmental, as their Project Coordinator who shall be responsible for administration of all of Respondents' actions required by the Order. To the greatest extent possible, the Project Coordinator shall be present at the Site or readily available during Work at the Site. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondents. Until further notice consistent with this Section, all communications with Respondents shall be directed to the Project Coordinator as follows:

Dulcy Berri
PBS Engineering and Environmental
4412 S.W. Corbett
Portland, OR 97201
(503) 417-7591
dulcy@pbsenv.com

22. Designation of On-Scene Coordinator. EPA has designated Dan Heister of EPA's Oregon Operations Office as its On-Scene Coordinator (OSC). Until further notice consistent with this Section, Respondents shall direct all communications required by this Order to the OSC at the following address:

Dan Heister
EPA Oregon Operations Office
811 S.W. Sixth Ave., 3rd Floor
Portland, OR 97204
(503) 326-6869
Heister.dan@epa.gov

23. EPA and Respondents shall have the right to change their designated OSC or Project Coordinator, providing notice ten days before such a change is made. This initial notification may be orally made but it shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

24. Asbestos Removal Action.

A. Consistent with the attached SOW, within 14 days of the Effective Date, Respondents shall submit for EPA review and approval a draft Surficial Removal Work Plan (SRWP) to provide for inspection and removal of asbestos-containing material (ACM) on or from the Site that is visible at the ground surface. EPA may approve, disapprove, require revisions to, or modify the draft SRWP in whole or in part. If EPA requires revisions, Respondents shall submit a revised draft SRWP within 15 days of receipt of EPA's notification of the required revisions. Upon EPA approval, the SRWP shall be carried out by Respondents through a certified asbestos abatement contractor, satisfying the terms and schedules of the SOW and SRWP. As approved or modified by EPA consistent with this Order, the SRWP shall be deemed incorporated into and made a fully enforceable part of this Order.

B. Consistent with the attached SOW, within 32 days of the Effective Date, Respondents shall submit a Burial Location Work Plan (BLWP). The BLWP shall provide for inspection, stabilization, consolidation, and/or other activities to eliminate structural hazards and minimize potential exposures to ACM or asbestos fibers. EPA may approve, disapprove, require revisions to, or modify the draft BLWP in whole or in part. If EPA requires revisions, Respondents shall submit a revised draft BLWP within 15 days of receipt of EPA's notification of the required revisions. Upon EPA approval, the BLWP shall be carried out by Respondents through a certified asbestos abatement contractor, satisfying the terms and schedules of the SOW and BLWP. As approved or

modified by EPA consistent with this Order, the BLWP shall be deemed incorporated into and made a fully enforceable part of this Order.

C. Post-Removal Site Control. In accordance with the Surficial Removal Work Plan schedule, or as otherwise directed by EPA, Respondents shall submit a proposal for post-removal site control consistent with 40 C.F.R. § 300.415(l) and OSWER Directive No. 9360.2-02. Upon EPA approval, Respondents shall implement such controls and shall provide EPA with documentation of all post-removal site control arrangements.

25. Additional Removal Actions.

A. Respondents may elect at any time during the term of this Order to undertake measures, beyond those required under this Order and the SOW, necessary to address the release or threatened release of hazardous substances at or from the Site. Such additional measures (including but not limited to asbestos abatement, engineering or institutional controls, and other response actions) are subject to prior approval by EPA.

B. If EPA determines that additional removal actions not included in an approved plan are necessary to protect public health, welfare, or the environment, EPA will notify Respondents of that determination. Unless otherwise stated by EPA, within 30 days of receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondents shall submit for approval by EPA a Work Plan for the additional removal actions. Upon EPA's approval of the plan, Respondents shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXVII (Modifications).

26. Health and Safety Plan. Within 15 days after the Effective Date, Respondents shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of Work under this Order. This

Health and Safety Plan (HASP) shall be prepared in accordance with the SOW and EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the HASP shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action and RI/FS.

27. Streamlined Risk Assessment. Consistent with the attached SOW, within 45 days of the Effective Date, Respondents shall submit a draft work plan for the performance of a Streamlined Risk Assessment (SRA) consistent with a CERCLA removal action. EPA may approve, disapprove, require revisions to, or modify the draft SRA Work Plan in whole or in part. If EPA requires revisions, Respondents shall submit a revised draft Work Plan within 15 days of receipt of EPA's notification of the required revisions. Upon EPA approval, the SRA Work Plan shall be carried out by Respondents satisfying the terms and schedules of the SOW and SRA Work Plan. As approved or modified by EPA consistent with this Order, the SRA Work Plan shall be deemed to be incorporated into and made a fully enforceable part of this Order.

28. Quality Assurance and Sampling.

A. Consistent with the schedule in the attached SOW, Respondents shall submit draft Sampling and Analysis Plans (SAPs) to support the asbestos removal and the SRA. Consistent with 40 C.F.R. § 300.430(b)(8), the SAPs shall consist of two parts: (1) a Field Sampling Plan and (2) a Quality Assurance Project Plan. EPA may approve, disapprove, require revisions to, or modify the draft SAPs in whole or in part. If EPA requires revisions, Respondents shall submit a revised SAP within 15 days of receipt of EPA's notification of the required revisions. Upon EPA approval, the SAPs shall be carried out by Respondents satisfying the terms and schedules of the SAP. As approved

or modified by EPA consistent with this Order, the SAPs shall be deemed to be incorporated into and made a fully enforceable part of this Order.

B. All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Upon request by EPA, Respondents shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondents shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

C. Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondents shall notify EPA at least ten days before any sample collection activity, unless EPA agrees to shorter notice. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondents to take split or duplicate samples of any samples it takes as part of its oversight of Respondents' implementation of the Work.

29. Reporting.

A. Consistent with the attached SOW, Respondents shall submit a written progress report to EPA every month beginning after EPA's approval of the Surficial Removal Work Plan and continuing until termination of this Order, unless otherwise directed in writing by the OSC.

B. Respondents who own or control property at the Site shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Order and written notice to EPA of the proposed conveyance, including the name and address of the transferee. Respondents who own or control property at the Site also agree to require that their

successors comply with the immediately preceding sentence and Sections IX (Site Access) and X (Access to Information).

30. Final Reports.

A. Removal Report. Within 30 days after completion of Work required by the Surficial Removal Work Plan and the Burial Location Work Plan, Respondents shall submit for EPA review a final Removal Report summarizing the actions taken to comply with each Work Plan. The Removal Report shall conform, at a minimum, with the requirements set forth in 40 C.F.R. § 300.165 entitled “OSC Reports.” The Removal Report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Surficial Removal Work Plan and Burial Location Work Plan, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (*e.g.*, manifests, invoices, bills, contracts, and permits).

B. Streamlined Risk Assessment Final Report. Within 60 days after completion of Work required by the Streamlined Risk Assessment Work Plan, Respondents shall submit for EPA review a final report summarizing the actions taken to comply with such Work Plan. Such final report shall include and support Respondents’ recommended findings concerning potential risks to human health from exposure to asbestos within or from the Site. EPA may concur with Respondents’ recommended findings, require changes, or otherwise issue its own final risk determination.

C. Each final report submitted by Respondents pursuant to this Paragraph shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

31. Off-Site Shipments.

A. Respondents shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the OSC and to the appropriate environmental official in the state of the receiving facility. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

a. Respondents shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Respondents shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the removal action. Respondents shall provide the information required by Paragraph 31(A) and 34(B) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

B. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondents shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents shall

only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

IX. SITE ACCESS

32. If the Site, or any other property where access is needed to implement this Order, is owned or controlled by any of the Respondents, such Respondents shall, commencing on the Effective Date, provide EPA, the State, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Order.

33. Where any action under this Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within 15 days after the Effective Date, or as otherwise specified in writing by the OSC. Respondents shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. Respondents shall describe in writing their efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate.

34. Notwithstanding any provision of this Order, EPA retains all of its access authorities and rights as well as all of its rights to require land use restrictions, including enforcement authorities related thereto, under CERCLA and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

35. Respondents shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to the Work performed at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other

documents or information related to the Work. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

36. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA or if EPA has notified Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondents.

37. EPA acknowledges that Respondents are defendants in a civil action filed by owners of lots in North Ridge Estates and that Respondents are not required to produce any documents or materials prepared in connection with the defense of that action that are protected by any legally recognized privilege including without limitation the attorney-client and work product privileges. Respondents may assert that documents prepared in connection with the civil action and certain other documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondents assert such a privilege in lieu of providing documents otherwise required to be provided under this Order, they shall prepare a privilege log to provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient, if any; 5) a general description of the contents of the document,

record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

38. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XI. RECORD RETENTION

39. Until five years after Respondents' receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), each Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until five years after Respondents' receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondents shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

40. At the conclusion of this document retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Respondents shall deliver any such records or documents to EPA. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the

subject of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

41. Each Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the State on January 3, 2002, regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

XII. COMPLIANCE WITH OTHER LAWS

42. Respondents shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

43. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of hazardous substances from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the OSC. If the OSC is unavailable, Respondents shall notify the EPA Emergency Response

Unit, Region 10, at the 24-hour emergency response phone: 1-800-424-8802.

Respondent shall take such actions in consultation with the OSC or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plan and any other applicable plans or documents developed pursuant to the SOW. In the event that Respondent fails to take appropriate response action as required by this Section, and EPA takes such action instead, Respondents shall reimburse EPA for all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

44. Subject to Section XIX of this Order (Covenants Not To Sue), nothing in this Paragraph or in this Order shall be deemed to limit any authority of EPA to (a) take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of hazardous substances on, at, or from the Site, or (b) direct or order such action, or seek an order from a court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

45. In addition, in the event of any release of a hazardous substance from the Site, Respondents shall notify the National Response Center at 1-800-424-8802 and submit a written report to EPA within seven days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001, *et. seq.*

XIV. AUTHORITY OF ON-SCENE COORDINATOR

46. The OSC shall be responsible for overseeing Respondents' implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Order, or to direct any

other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

XV. PAYMENT OF RESPONSE COSTS

47. Payment for Past Response Costs.

A. Following the Effective Date, EPA will provide to Respondents a bill for payment of Past Response Costs that includes a Superfund Cost Recovery Package Imaging and On-line System (SCORPIOS) report or similar cost summary certified by EPA. Within 30 days of receipt of such billing, Respondents shall pay the bill for Past Response Costs. Payment shall be made to EPA by Electronic Funds Transfer (EFT) in accordance with current EFT procedures to be provided to Respondents by EPA Region 10, and shall be accompanied by a statement identifying the name and address of the parties making payment, the Site name "North Ridge Estates," the Site ID No. 10AY, and the EPA docket number for this action. In the alternative to payment by EFT, payment may be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Each check, or a letter accompanying each check, shall identify the name and address of the parties making payment, the Site name "North Ridge Estates," Site ID No. 10AY, and the EPA docket number for this action. Respondents shall send the check to the following address:

Mellon Client Services Center
EPA Region 10
500 Ross Street
P.O. Box 360903M
Pittsburgh, PA 15251-6903

B. At the time of payment, Respondents shall send notice that such payment has been made to the following addresses:

Regional Financial Management Officer
U.S. EPA Region 10
1200 Sixth Avenue
Seattle, WA 98101

Clifford J. Villa
U.S. EPA Region 10

1200 Sixth Avenue, ORC-158
Seattle, WA 98101

C. The total amount to be paid by Respondents pursuant to Paragraph 47(A) shall be deposited in the North Ridge Estates Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

48. Payments for Future Response Costs.

A. Respondents shall pay to EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondents a bill requiring payment that includes a SCORPIOS report or similar cost summary certified by EPA. Respondents shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 50 of this Order.

B. Respondents shall make all payments required by this Paragraph by a certified or cashier's check made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the parties making payment, the EPA Site ID No. 10AY, and the EPA docket number for this action. Respondents shall send the check to the following address:

Mellon Client Services Center
EPA Region 10
500 Ross Street
P.O. Box 360903M
Pittsburgh, PA 15251-6903

C. At the time of payment, Respondents shall send notice that payment has been made to the following addresses:

Regional Financial Management Officer
U.S. EPA Region 10
1200 Sixth Avenue
Seattle, WA 98101

Clifford J. Villa
U.S. EPA Region 10
1200 Sixth Avenue, ORC-158

Seattle, WA 98101

D. The total amount to be paid by Respondents pursuant to Paragraph 48(A) shall be deposited in the North Ridge Estates Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

49. In the event that the payments for Past Response Costs or Future Response Costs are not made within 30 days of Respondents' receipt of a bill, Respondents shall pay Interest on the unpaid balance. The Interest on Past Response Costs and Future Response Costs shall begin to accrue on the date of receipt of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.

50. Respondents may dispute all or part of a bill for Past Response Costs or Future Response Costs submitted under this Order, if Respondents allege that EPA has made an accounting error, or if Respondents allege that a cost item is inconsistent with the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondents shall pay the full amount of the uncontested costs to EPA as specified in Paragraphs 47-48 on or before the due date. Within the same time period, Respondents shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondents shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 48(C) above, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information identifying the bank and bank account under which the escrow account is established, as well as a bank statement showing the initial balance of the escrow account. Respondents shall ensure that the

prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 15 days after the dispute is resolved.

XVI. DISPUTE RESOLUTION

51. Unless otherwise expressly provided for in this Order, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Order. The Parties shall attempt to resolve any disagreements concerning this Order expeditiously and informally.

52. If Respondents object to any EPA action taken pursuant to this Order, including under Section XV (Payment of Response Costs) and Paragraph 25 (Additional Removal Actions), they shall notify EPA in writing of their objections within seven days of such action. EPA and Respondents shall have 21 days from EPA's receipt of Respondents' written objections to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

53. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by both Parties, be incorporated into and become an enforceable part of this Order. If the Parties are unable to reach an agreement within the Negotiation Period, the Director of the EPA Region 10 Environmental Cleanup Office will issue a written decision on the dispute to Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Order. Respondents' obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

54. Respondents agree to perform all requirements of this Order within the time limits established under this Order, unless the performance is delayed by a *force majeure*. For purposes of this Order, a *force majeure* is defined as any event arising from causes beyond the control of Respondents, or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Order despite Respondents' best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work, or increased cost of performance.

55. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a *force majeure* event, Respondents shall notify EPA orally within 48 hours of when Respondents first knew that the event might cause a delay. Within five days thereafter, Respondents shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

56. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Order that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the

obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondents in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. STIPULATED PENALTIES

57. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 58 and 59 for failure to comply with the requirements of this Order specified below, unless excused under Section XVII (*Force Majeure*). “Failure to comply” shall mean failure to complete the activities under this Order or any plan approved under this Order within the time schedules specified by or approved under this Order and in accordance with all applicable requirements of law.

58. Stipulated Penalty Amounts - Work. Except as provided in the following Paragraph, the following stipulated penalties shall accrue per violation per day for any noncompliance:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1 st through 7 th day
\$500	8 th through 14 th day
\$1000	15 th through 30 th day
\$5000	31 st day and beyond

59. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports pursuant to Paragraph 29:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1 st through 14 th day
\$500	15 th through 30 th day
\$1000	31 st day and beyond

60. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 72, Respondents shall be liable for a stipulated penalty in the amount of \$50,000.

61. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and 2) with respect to a decision by the Director of the EPA Region Environment Cleanup Office under Paragraph 53 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the Director issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

62. Following EPA's determination that Respondents have failed to comply with a requirement of this Order, EPA may give Respondents written notification of the failure and describe the noncompliance. EPA may send Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondents of a violation.

63. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be made by certified or cashier's check payable to "EPA Hazardous Substances Superfund," shall be mailed to the address indicated in Paragraph 48(B), shall indicate that the payment is for stipulated penalties, and shall reference EPA Site ID No. 10AY, the EPA docket number

for this action, and the name and address of the parties making payment. Copies of checks paid pursuant to this Section, and any accompanying transmittal letters, shall be sent to EPA at the addresses provided in Paragraph 48(C).

64. The payment of penalties shall not alter in any way Respondents' obligation to complete performance of the Work required under this Order.

65. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

66. If Respondents fail to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 62. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Order or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Order. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

XIX. COVENANTS NOT TO SUE BY EPA

67. Except as otherwise specifically provided in this Order, upon issuance of EPA's Notice of Completion pursuant to Section XXVIII of this Order, EPA covenants not to sue Respondents for judicial imposition of damages or civil penalties or to take

administrative action against Respondents for any failure to satisfy the requirements of this Order except as otherwise reserved herein.

68. Except as otherwise specifically provided in this Order, in consideration and upon Respondents' payment of the Past Response Costs and Future Response Costs specified in Section XV of this Order, EPA covenants not to sue or to take administrative action against Respondents under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for recovery of such response costs.

69. These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Order. These covenants not to sue extend only to the Respondents and do not extend to any other person.

XX. RESERVATION OF RIGHTS BY EPA

70. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

71. The covenants not to sue set forth in Section XIX above do not pertain to any matters other than those expressly identified therein. EPA reserves, and this Order is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

A. claims based on a failure by Respondents to meet a requirement of this Order;

B. liability for costs not included within the definitions of Past Response Costs or Future Response Costs;

C. liability for performance of response action other than the Work;

D. criminal liability;

E. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

F. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

G. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

72. Work Takeover. In the event EPA determines that Respondents have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondents may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondents shall pay pursuant to Section XV (Payment of Response Costs). Notwithstanding any other provision of this Order, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY RESPONDENTS

73. Respondents covenant not to sue and agree not to assert any claims or causes of action against EPA, or its contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs, or this Order, including, but not limited to:

A. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

B. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

C. any claim against EPA pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

74. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Subparagraphs 71 (B), (C), and (E) - (G), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

75. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXII. OTHER CLAIMS

76. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

77. Except as expressly provided in Section XIX (Covenant Not to Sue by EPA), nothing in this Order constitutes a satisfaction of or release from any claim or cause of

action against Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

78. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. CONTRIBUTION PROTECTION

79. The Parties agree that Respondents are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for Matters Addressed in this Order. Nothing in this Order precludes the United States or Respondents from asserting any claims, causes of action, or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery, and Respondents expressly reserve any and all claims they may have against any governmental department, agency, or instrumentality, other than EPA. Such claims may include, but are not limited to, contribution and counterclaims relating to or arising from the Matters Addressed by this Order.

XXIV. INDEMNIFICATION

80. EPA does not assume any liability by entering into this agreement or by virtue of any designation of Respondents as EPA's authorized representative under Section 104(e) of CERCLA. Respondents shall indemnify, save and hold harmless EPA and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action to the extent such claims arise from, or on account of, negligent or other wrongful acts or omissions of Respondents, their partners, officers, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Order, including, but

not limited to, any claims arising from any designation of Respondents as EPA's authorized representative under Section 104(e) of CERCLA. Further, Respondents agree to pay the United States costs, including, but not limited to, attorneys' fees and other expenses of litigation and settlement to the extent such costs arise from, or on account, of claims made against EPA based on negligent or other wrongful acts or omissions of Respondents, their partners, officers, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Order. No party to this Order shall be held out as a party to any contract entered into by or on behalf of any other party to this Order in carrying out activities pursuant to this Order. No party or any of its contractors shall be considered an agent of any other party to this Order. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Paragraph, and shall consult with Respondents prior to settling such claim.

81. Respondents waive all claims against EPA for damages or reimbursement or for set-off of any payments made or to be made to EPA, arising from or on account of any contract, agreement, or arrangement between Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXV. INSURANCE

82. Prior to commencing any Work under this Order, Respondents shall obtain comprehensive general liability (CGL) and automobile insurance. The CGL insurance shall have an annual aggregate limit of not less than two million dollars, naming EPA as additional insured, to insure against all claims of injury or property damage to third parties arising from or related to such work. Respondents shall maintain automobile liability insurance as follows: bodily injury liability \$500,000 each person, one million dollars each occurrence; property damage liability \$500,000 each occurrence. Such insurance shall be maintained for the duration of this Order and for two years after

completion of all Work required hereunder. In lieu of such coverage, Respondents, at their option, may provide evidence of financial capacity sufficient for purposes of self-insurance pursuant to the requirements in 40 C.F.R. Part 265, Subpart H.

83. Respondents may demonstrate by evidence satisfactory to EPA that their contractor or subcontractors maintain equivalent coverage, or coverage for the same risks but in a lesser amount or for lesser terms, in which case Respondents need to provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor. At least seven days prior to commencing any field work under this Order, Respondents shall provide EPA with copies of the applicable policies or other evidence of the required coverage.

84. For the duration of this Order, Respondents shall satisfy, or ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding workers compensation coverage for all persons performing field work on their behalf in implementing this Order. Prior to commencing such work, Respondents shall provide EPA with copies of the applicable policies or other evidence of such coverage.

XXVI. FINANCIAL ASSURANCE

85. Within 30 days of the Effective Date, Respondents shall establish and maintain financial security in the amount of \$400,000 in one or more of the following forms:

- A. A surety bond guaranteeing performance of the Work;
- B. One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- C. A trust fund;
- D. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of Respondents;

- E. A demonstration that one or more of the Respondents satisfy the requirements of 40 C.F.R. Part 264.143(f); or
- F. An escrow account, restricted and dedicated solely for payment of costs incurred to perform the Work and reimburse EPA for Future Response Costs under this Order.

86. If Respondents seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 85(A) of this Section, Respondents shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Respondents seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 85(D) or (E) of this Section, they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Respondents shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 85 of this Section. Respondents' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Order.

87. If, after the Effective Date, Respondents can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 85 of this Section, Respondents may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondents shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Respondents may reduce the amount of the security in accordance with the written decision resolving the dispute.

88. Respondents may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondents may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

XXVII. MODIFICATIONS

89. Modifications to any work plan or schedule established or required by this Order may be made, in writing, by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within seven days; provided, however, that the effective date of the modification shall be the date of the OSC's oral direction. Any other requirements of the Order may be modified, in writing, by mutual agreement of the parties.

90. If Respondents seek permission to deviate from the Statement of Work or any approved Work Plan or schedule, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed Work Plan modification and its basis.

91. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XXVIII. NOTICE OF COMPLETION OF WORK

92. When EPA determines, after EPA's review of the final reports submitted pursuant to Paragraph 30, that all removal actions have been fully performed and all elements of the Streamlined Risk Assessment have been completed, in accordance with this Order, the SOW, and approved work plans, EPA will provide a Notice of Completion to the Respondent. If EPA determines that any removal actions or Streamlined Risk

Assessment elements have not been completed in accordance with this Order, EPA will notify the Respondents, provide a list of the deficiencies, and require that Respondents modify a work plan, if appropriate, in order to correct such deficiencies. The Respondents shall implement the modified and approved work plan and shall submit a modified final report in accordance with the EPA notice. Failure by Respondents to implement an approved modified work plan shall be a violation of this Order.

XXIX. SEVERABILITY AND INTEGRATION

93. If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

94. This Order and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Order. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Order. The following appendices are attached to and incorporated into this Order:

- A. Statement of Work
- B. Action Memorandum
- C. Site Map

XXX. EFFECTIVE DATE

95. This Order shall be effective immediately upon the signature by the EPA Region 10 official designated below.

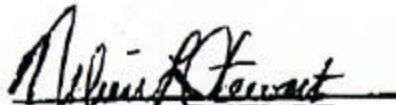
The undersigned Respondents or representatives certify that they are fully authorized to enter into the terms and conditions of this Order and to bind the party he or she represents to this document.


MEK PARTNERSHIP


5-20-03
DATE


M.L. STEWART, INC.

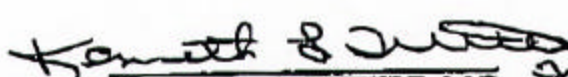
5-20-03
DATE


MELVIN L. STEWART

5-20-03
DATE


MARY LOU STEWART

05-20-03
DATE

 MP # 5-20-03
KENNETH L. TUTTLE, M.D. ~~Signature~~ DATE
Individually, on behalf of Kenneth L.
Tuttle M.D. P.C., and as Trustee
of the KENNETH L. TUTTLE, M.D.,
P.C., EMPLOYEE PENSION AND
PROFIT SHARING PLAN AND
TRUST FOR KENNETH L.
TUTTLE

It is so ORDERED and AGREED this 21 day of May, 2003.



Chris Field, Unit Manager
Emergency Response Unit
U.S. Environmental Protection Agency
Region 10

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